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Attorneys for Defendants
City of San Jose and Debra Figone, in Her
Official Capacity

IN THE SUPERIOR COURT FOR THE

COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE RETIREMENT PLAN OF CITY OF SAN JOSE, and DOES 1-10 inclusive.,

Defendants.

AND RELATED CROSS-COMPLAINT AND CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926
[AFSCME Case No. 1-12-CV-227864]

Consolidated with Case Nos. 112CV225928, 112CV226570, 112CV226574, 112CV225926]

Assigned for all purposes to the Honorable Patricia M. Lucas]

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE RE STATEMENT OF DECISION, JUDGMENT AND ORDER IN CASE OF *PROTECT OUR BENEFITS V. CITY AND COUNTY OF SAN FRANCISCO*, ISSUED BY SAN FRANCISCO SUPERIOR COURT

BY FAX

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants City of San Jose and Debra Figone, in her official capacity, hereby request the Court to take judicial notice pursuant to California Evidence Code Sections 450 *et seq*., and in accordance with California Rules of Court 3.1113, subdivision (l) and 3.1306, subdivision (c), of the following material, true and correct copies of which are attached hereto:

Exh. A: Statement of Decision in case entitled *Protect Our Benefits v. City and County of San Francisco*, CPF-13-512788, San Francisco Superior Court, dated September 9, 2013.

Exh. B: Judgment in case entitled *Protect Our Benefits v. City and County of San Francisco*, CPF-13-512788, San Francisco Superior Court, dated September 9, 2013

Exh. C: Order Denying Petition For Writ of Mandate and Declaratory and Injunctive Relief Decision in case entitled *Protect Our Benefits v. City and County of San Francisco*, CPF-13-512788, San Francisco Superior Court, dated September 9, 2013

Exhibits A, B and C are properly subject to judicial notice pursuant to California Evidence Code Sections 451(a) because they are decisional law of this state and 452(c) because they are official acts of the judicial department of this state.

The decision of the San Francisco Superior Court is relevant in this case because it concerns a supplemental retiree benefit similar to the Supplemental Retiree Benefit Reserve at issue in the instant case involving San Jose's Measure B. In both cases, Charter cities placed measures on the ballot, which were approved by the voters, to amend the City Charter. In both cases, the Charter measures changed the supplemental benefit because the benefit was potentially payable when the retirement funds were underfunded, contrary to the original purpose of the benefit.

For these reasons, the City respectfully requests that the Court take judicial notice of the above-listed documents.

DATED: October 3, 2013 MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____ For

Arthur A. Hartinger
Linda M. Ross
Jennifer L. Nock
Attorneys for Defendants
City of San Jose and Debra Figone, in Her Official Capacity

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On October 3, 2013, I served true copies of the following documents described as **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE RE STATEMENT OF DECISION, JUDGMENT AND ORDER IN CASE OF *PROTECT OUR BENEFITS V. CITY AND COUNTY OF SAN FRANCISCO*, ISSUED BY SAN FRANCISCO SUPERIOR COURT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address kthomas@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 3, 2013, at Oakland, California.

Rhonda Simpson

SERVICE LIST

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Stephen H. Silver, Esq. Richard A. Levine, Esq. Jacob A. Kalinski, Esq. Silver, Hadden, Silver, Wexler & Levine 1428 Second Street, Suite 200 P.O. Box 2161 Santa Monica, California 90401 shsilver@shslaborlaw.com	Attorneys for Plaintiffs/Petitioners SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT AND ROSALINDA NAVARRO

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Exhibit A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PROTECT OUR BENEFITS,

Plaintiff and Petitioner,

vs.

CITY AND COUNTY OF SAN FRANCISCO, DOES 1-5,

Defendants and Respondents.

Case No. CPF-13-512788

[PROPOSED] STATEMENT OF DECISION DENYING PETITION FOR WRIT OF MANDATE AND DECLARATORY AND INJUNCTIVE RELIEF

AUG 28 2013

STATEMENT OF DECISION

At 9:30 a.m. on August 13, 2013, the Petition for Writ of Mandate and Declaratory and Injunctive Relief ("Petition") of petitioner Protect Our Benefits came on for hearing in Department 302 of the San Francisco Superior Court, before the Honorable Richard A. Kramer. Petitioner was represented by its attorneys, David Clisham and Justine Clisham. Respondent, the City and County of San Francisco ("the City"), was represented by its counsel, Deputy City Attorney Wayne Snodgrass.

Having reviewed the record in this matter, the briefs and other documents submitted by counsel, and the arguments of counsel at the hearing on August 13, 2013, the Court denies the Petition upon the request of Petitioner and ~~enters~~ the court has prepared this Statement of Decision.

I. PETITIONER BEARS THE BURDEN OF SHOWING THAT SUBSECTION (D) IS INVALID

Petitioner contends that Section A8.526-3(d) of the Charter of the City and County of San Francisco ("subsection (d)"), which was added to the Charter by local voters' adoption of Proposition C in November 2011, impairs retirees' vested rights, protected by the contract clauses of the federal and state constitutions, to receive so-called supplemental cost of living adjustments ("supplemental COLAs").[1] (Petition, ¶ 1.) Petitioner also contends that subsection (d) is "false," and was adopted by the voters without an actuarial report required by Charter Section A8.500. (*Id.*)

In adjudicating petitioner's challenge to subsection (d) of the City Charter, this Court begins with the presumption that that provision is lawful. Legislative enactments are "presume[d] to be constitutional, and come before the court with every intendment in [their] favor." (*Associated Homebuilders of Greater East Bay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604-05; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1102 [holding that "[a]ll presumptions favor the validity of a statute. The court may not declare it invalid unless it is clearly so"].) This presumption applies to local

[1] Subsection (d) states, in full, as follows:

"To clarify the intent of the voters when originally enacting this Section in 2008, beginning on July 1, 2012 and July 1 of each succeeding year, no supplemental cost of living benefit adjustment shall be payable unless the Retirement System was also fully funded based on the market value of the assets for the previous year."

legislative measures concerning municipal pensions. (*City of San Diego v. Haas* (2012) 207 Cal.App.4th 472, 496.) The burden, therefore, is on petitioner to demonstrate that subsection (d) is unlawful.

II. SUBSECTION (D) DOES NOT VIOLATE RETIREES' VESTED RIGHTS

Under California law, "[a] public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment," which right "may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity." (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863.) Petitioner's primary claim in this action is that subsection (d) impairs City retirees' vested rights in violation of the federal and state constitutions' contracts clauses. This Court concludes, however, that petitioner has not met its burden of showing that subsection (d) creates any such impairment of vested rights.

The vested rights doctrine is not absolute, and "does not exact a rigidly literal fulfillment" of the terms of pension laws. Thus, "[n]ot every change in a retirement law constitutes an impairment of the obligations of contracts," and "[n]or does every impairment run afoul of the contract clause." (*Allen v. Board of Administration of the Public Employees' Retirement System* (1983) 34 Cal.3d 114, 119.) Under that doctrine, a public employee "does not obtain, prior to retirement, any absolute right to fixed or specific benefits, but only to a 'substantial or reasonable pension.'" (*Betts, supra,* 21 Cal.3d at p. 863.) Under the federal and California Constitutions, it is a "well-established constitutional principle that 'laws which restrict a party to those gains reasonably to be expected from the contract are not subject to attack under the Contract Clause, notwithstanding that they technically alter an obligation of a contract." (*Allen, supra,* 34 Cal.3d at p. 124; *Teachers' Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1034.)

The constitutional prohibition against contract impairment demands only "that contracts be enforced according to their 'just and reasonable purport.'" (*Allen, supra,* 34 Cal.3d at pp. 119-120.) The "just and reasonable purport" of a pension contract lies in its "real theory and objective" or "real character," and not necessarily in a "rigid literal fulfillment of the contract." (*Allen, supra,* 34 Cal.3d at p. 122.) "Constitutional decisions have never given a law which imposes unforeseen advantages or burdens on a contracting party constitutional immunity against change." (*Id.*, 34 Cal.3d at p. 120.)

Allen held that a 1966 state statute specifying pension benefits for retired legislators, which "prevented literal fulfillment" of an earlier statute that would have resulted in a larger pension, did not

violate the federal or state Contracts Clauses. As the Court explained,"[t]he 1966 restriction preserved the basic character of the earned benefit but withheld a windfall unrelated to its real character." (*Allen, supra,* 34 Cal.3d at p. 122.) Calculating pensions under the formula that had been in place during the plaintiff retirees' employment, the Court held, "not only would give to [plaintiffs] a bonanza far outstripping any reasonable expectation," but also "would require correspondingly excessive appropriations of general tax funds to maintain the retirement fund's fiscal integrity .... every principle of equity and financial responsibility strongly counsels against such a consequence." (*Id.* at p. 125.) Thus, the Legislature, in 1966, could choose "to confine beneficiaries to the gains 'reasonably to be expected from the contract' and to withhold 'unforeseen advantages' which had no relation to the real theory and objective" of the contract. (*Id.*, 34 Cal.3d at pp. 120, 122.)

While the facts of this case are not identical to those in *Allen*, this Court finds that its holding applies here. Petitioner characterizes subsection (d) as a "prohibition of the supplemental COLA" (Pet. Mem. of Pts. & Auth. at 1:21), but this Court concludes that rather than imposing any "prohibition," subsection (d) returns supplemental COLAs to the purpose for which the voters originally added them to the City Charter: to allow retirees to share in surplus earnings of the Retirement Fund when the Fund can ~~readily~~ afford to do so. As the relevant pages from the City's voter pamphlets show, the voters enacted supplemental COLAs in 1996, and expanded them in 2002 and 2008, after being assured, in the relevant ballot pamphlet materials, that the Retirement Fund was fully funded, and that the City was benefiting from the Fund's investment earnings by making little or no employer contributions to the Fund. Under such circumstances, the voters were told, it would be unfair not to allow retirees to also share in the bounty; the voters were urged that if the economically flush times redounded to the benefit of the City and its current employees, then retirees, too, should share that benefit. (*See, e.g.*, Respondent's Request for Judicial Notice ["RFJN"], Ex. A, p. 100 [emphasis original].)[2] The legislative history of the relevant Charter amendments from 1996 onward shows that the availability of supplemental COLAs was tied to whether the

[2] For example, in 2002 the City Controller informed the voters that "no cash would be required [to amend the Charter to make supplemental COLAs compound] since the City's Retirement System has a large surplus," and that because of that large surplus, the City was not making any employer contributions to the Retirement Fund and would not be required to do for many years in the future. (RFJN, Ex. B, p. 47.)

Fund was fully funded. The "real theory and objective" of supplemental COLAs thus has been to let retirees share in the bounty of unexpectedly high investment earnings, when the Fund can afford to do so. Indeed, were the Retirement Fund not fully funded in 1996, 2002 or 2008, it seems quite unlikely that the voters would have approved or extended supplemental COLAs, as they did.

Subsection (d) permissibly makes explicit the basic and real character of supplemental COLAs, which was implicit since 1996, and places that real character in legislative text. It corrects an "unforeseen advantage" that retirees would otherwise enjoy – receiving supplemental COLAs at a time when the Retirement Fund is underfunded, and when the City thus "has had to increase substantially its employer contributions" to the Fund, and when current employees "have voluntarily agreed to wage reductions." (Prop. C, "Findings and Purpose.") The provision also corrects the "unforeseen burden" that the City, its taxpayers and current employees would otherwise be required to shoulder, of having to fund supplemental COLAs even in conditions which the voters did not contemplate, and under which the voters, from the legislative history in the record, presumably would not have wanted supplemental COLAs to be available. While subsection (d) "technically alter[s] an obligation of a contract," the Court concludes that it preserves and is faithful to supplemental COLAs' fundamental objective. (*Allen, supra*, 34 Cal.3d at pp. 120, 124.) It does not abrogate the spirit of the pre-2011 Charter amendments concerning supplemental COLAs, because it is consistent with the spirit or basic theory for which the voters added and extended supplemental COLA benefits to the Charter from 1996 to 2008. (*Cf. United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095, 1100, 1109 [while "state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment," charter amendment capping pension cost of living increases violates retirees' vested rights, because, *inter alia,* charter had previously been amended to make cost of living increases "fully reflect the rate of inflation each year" in spite of openly acknowledged risks involved, and subsequent amendment capping increases "in no manner enhances the integrity or soundness of the [retirement] funds"].)

For the above reasons, the Court concludes that petitioner has not met its burden of showing that subsection (d) impairs any retirees' vested rights in violation of the federal or state contracts clauses.

III. SUBSECTION (D) DOES NOT VIOLATE THE VESTED RIGHTS OF RETIREES WHO RETIRED BEFORE SUPPLEMENTAL COLAS WERE ADDED TO THE CITY CHARTER

Even if this Court were to find that subsection (d) unconstitutionally impaired the vested rights of *some* retirees, the Court would still conclude that that subsection does not impair the vested rights of retirees who retired before supplemental COLAs were first added to the City Charter in 1996 through the voters' adoption of 1996's Proposition C (herein referred to as "pre-1996 retirees").

Under California law, a public employee is deemed to have a vested right in those retirement benefits available at the time he or she takes public employment or remains *in* such employment, because the employee's decision to accept or remain in public employment provides consideration for the promise of pension benefits. Thus "[a]n employee's contractual pension expectations are measured by benefits which are in effect not only when employment commences, but which are thereafter conferred during the employee's subsequent tenure." (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 866; *United Firefighters of Los Angeles City, supra,* 210 Cal.App.3d at pp. 1102, 1103 fn. 3.)

However, employees "who retired prior to the effective dates" of pension laws have no contractual right to benefits available under those laws, "because they did not exchange their labors for the benefits created after retirement and for that reason gained no vested contractual rights to them." (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 660; *Pasadena Police Officers Association v. City of Pasadena* (1983) 147 Cal.App.3d 695, 706 [public employees who "had completed all their years of service and retired before any COLA benefits was enacted … never gave services with the reasonable expectation that their pensions would be adjusted for changes in the cost of living," and thus "had no vested contractual right, based on the contract in effect during their employment, to continuation of the COLA benefit"] [emphasis omitted]; *Olson v. Cory* (1980) 27 Cal.3d 532, 542 [holding that "[j]udicial pensioners whose benefits are based on judicial services terminating before the effective date of applicable law providing for unlimited cost-of-living increases, have no vested right to benefits resulting therefrom"].) Any "promise" of pension benefits made to already-retired employees would not give rise to vested rights, because it would not be supported by any consideration.

Here, any person who retired from City employment before the 1996 Charter amendment providing for supplemental COLAs took effect "did not exchange [his or her] labors for the

[supplemental COLA] benefits created after retirement and for that reason gained no vested contractual rights to them." (*Claypool, supra,* 4 Cal.App.4th at p. 660.) Thus, even if subsection (d) impermissibly impaired the vested rights of City retirees who retired after that 1996 Charter amendment (which this Court has concluded it did not do), subsection (d) would still remain lawful as applied to pre-1996 retirees.[3]

Petitioner contends even pre-1996 retirees have a vested right to supplemental COLAs, citing *Sweesy v. Los Angeles County Peace Officers Retirement Bd.* (1941) 17 Cal.2d 356, *Nelson v. City of Los Angeles* (1971) 21 Cal.App.3d 916, and *United Firefighters of Los Angeles City, supra.* But *Sweesy* and *Nelson* hold only that laws providing pension benefits even for already-retired persons are enforceable; neither case addresses the degree to which a legislative body may *amend* laws that provide pension benefits to such persons. And *United Firefighters* held that amendments to pension laws impaired the vested rights of employees who had not yet retired, but did not discuss the rights of retirees who had retired before those laws took effect. This Court finds those cases inapplicable.

IV. POB HAS NOT MET ITS BURDEN OF SHOWING THAT SUBSECTION (D) WAS ENACTED WITHOUT THE REQUIRED ACTUARIAL REPORT

Section A8.500 of the Charter states that before the Board of Supervisors may place a pension measure on the ballot, it must obtain "an actuarial report of the cost and effect of any proposed change in the benefits under the Retirement System." Petitioner contends that the Board of Supervisors did not comply with this requirement when it placed the portion of 2011's Proposition C that ultimately enacted

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[3] In its reply brief, petitioner contends that the City has waived any challenge to pre-1996 retirees' vested rights claim by failing to raise that issue as an affirmative defense in its answer. But "[a]n affirmative defense is new matter that defendants are required to plead and prove." (*Marich v. MGM/UA Telecommunications, Inc.* (2003) 113 Cal.App.4th 415, 424.) Here, it is petitioner who contends that retired employees have a vested rights claim, and it is thus petitioner's burden to plead and prove that claim as to any retirees who assert it. Moreover, the City's 5th affirmative defense – that "[t]he relief sought by the Petition, in whole or in part, is unavailable as a matter of law" – reasonably encompasses the issue of whether subsection (d) can be invalidated as to all groups of retirees. Finally, even if the City should have pleaded the issue of pre-1996 retirees as an affirmative defense but failed to do so, this Court would have discretion to allow the City to amend its answer, particularly since petitioner would suffer no prejudice thereby. "A trial court has discretion to allow amendment of any pleading at any stage of the proceedings and it has been said that liberality should be particularly displayed in allowing amendment of answers so that a defendant may assert all defenses available to him." (*Ramos v. City of Santa Clara* (1973) 35 Cal.App.3d 93, 95-96.)

subsection (d) on the ballot. This Court concludes that petitioner has not carried its burden of showing any violation of Charter Section A8.500.

The record shows that the Retirement Board's consulting actuary, Cheiron, provided the Retirement Board with a "cost and effect" report concerning Proposition C (including subsection (d)) on June 22, 2011, as well as with a further "cost and effect" report concerning subsection (d)'s newly-added "market value" language on June 29, 2011. (*See* Pet. Mem. of Pts. & Auth. at 14:11-13; *see also* Dec. of Jay Huish in Support of Respondent's Opposition at ¶¶ 20-25.) The Retirement Board provided each of these two "cost and effect" reports to the Board of Supervisors. (*Id.*) Neither the Charter nor any other law cited to the Court defines an "actuarial report," or provides any criteria or standards that an "actuarial report" must meet. Moreover, Cheiron's June 22, 2011 and June 29, 2011 "cost and effect" reports each discussed the impacts that Proposition C's provision concerning supplemental COLAs would have on the City's costs, and each presented tables showing the results of Cheiron's simulation of 500 investment returns to determine the probable cost impacts of the supplemental COLA provision on projected employer contribution rates. Petitioner has not shown any violation of Charter Section A8.500.

V. POB HAS NOT MET ITS BURDEN OF SHOWING THAT SUBSECTION (D) CONTAINS ANY FALSEHOOD

Petitioner contends that subsection (d) is invalid because it sought "to deliberately mislead voters into concluding that the 'limit' on supplemental [COLAs] was already in the charter when it clearly is a new, additional provision ..." (Pet. Mem. of Pts. & Auth. at 11:8-13:13.) However, petitioner cites no authority that allows a court to question the accuracy of language contained in a voter-approved initiative, and on that basis to invalidate it. Our Supreme Court has held that it is "the duty of the courts to jealously guard" the voters' Constitutional initiative power, which "the courts have described ... as articulating one of the most precious rights of our democratic process. It has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) Petitioner provides no authority allowing this Court to do otherwise.

Because the voters approved Proposition C, its text – including subdivision (d) – "must be understood, not as the words of the civil service commission, or the city council, or the mayor, or the city attorney, but as the words of the voters who adopted the amendment." (*AIU Ins. Co. v. Gillespie* (1990) 222 Cal.App.3d 1155, 1159.) And because "[t]he voters are presumed to be aware of existing law, including the administrative enforcement provisions," this Court must "assume the electorate, when enacting [subsection (d)], was aware of preexisting related laws," including the Charter's then-existing provisions concerning supplemental COLAs. (*Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1085 [cites omitted].) Just as an elected legislative body may enact legislation clarifying the intent underlying earlier-enacted laws, the voters, exercising their initiative power to enact and clarify legislation, must be permitted to do the same.[4] Petitioner has failed to meet its burden of showing that subsection (d) is invalid as containing any falsehoods.

CONCLUSION

For each of the reasons set forth above, POB's petition for writ of mandate and for declaratory and injunctive relief is hereby denied. This Court hereby orders that judgment be issued and entered in favor of respondent City and County of San Francisco.

Dated: 9-9-13

JUDGE OF THE SUPERIOR COURT

[4] Petitioner appears to contend that the voters in 2008 could not have intended to enact any change to the availability of supplemental COLA benefits "beginning on July 1, 2012[.]" However, the voters in 2008 could have intended that supplemental COLA benefits be linked to the funding status of the Retirement Fund *at that time,* and the voters, in 2011, could have determined to clarify that intention only on a prospective basis – that is, "beginning on July 1, 2012" – rather than retroactively.

Exhibit B

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COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PROTECT OUR BENEFITS,

Plaintiff and Petitioner,

vs.

CITY AND COUNTY OF SAN FRANCISCO, DOES 1-5,

Defendants and Respondents.

Case No. CPF-13-512788

[~~PROPOSED~~] JUDGMENT

Action Filed: February 25, 2013
Trial Date: Not set

JUDGMENT

On February 25, 2013, petitioner Protect Our Benefits filed its Petition for Writ of Mandate and Declaratory and Injunctive Relief ("Petition"). This Court heard argument on the Petition on August 13, 2013. Following argument, this Court has signed and filed its Statement of Decision denying the Petition. No further claims or causes of action remain to be resolved by this Court. Accordingly, this Court hereby ORDERS, ADJUDGES AND DECREES as follows:

1. Petitioner Protect Our Benefits shall take nothing by its Petition in this action.

2. In accordance with this Court's Statement of Decision, judgment with prejudice shall be entered forthwith in favor of respondent the City and County of San Francisco, and against petitioner Protect Our Benefits.

3. Respondent the City and County of San Francisco shall recover its costs herein.

Dated: 9-9-13

JUDGE OF THE SUPERIOR COURT

Exhibit C

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COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PROTECT OUR BENEFITS,

Plaintiff and Petitioner,

vs.

CITY AND COUNTY OF SAN FRANCISCO, DOES 1-5,

Defendants and Respondents.

Case No. CPF-13-512788

[~~PROPOSED~~] ORDER DENYING PETITION FOR WRIT OF MANDATE AND DECLARATORY AND INJUNCTIVE RELIEF

Action Filed: February 25, 2013
Trial Date: Not set

AUG 28 2013

ORDER

Petitioner Protect Our Benefits' Petition for Writ of Mandate and Declaratory and Injunctive Relief came on for hearing at 9:30 a.m. on August 13, 2013, in Department 302 of the above-captioned Court, the Honorable Judge Richard A. Kramer presiding. Petitioner was represented by its attorneys, David Clisham and Justine Clisham. Respondent, the City and County of San Francisco, was represented by its attorney, Deputy City Attorney Wayne Snodgrass.

This Court has reviewed the pleadings and other papers and exhibits filed in support of and in opposition to the Petition. This Court also has considered the arguments of counsel presented at the hearing on the Petition.

This Court now rules as follows: the Petition is DENIED. Petitioner has not presented evidence compelling the conclusion that Subsection (d) is unreasonable and invalid. (*City of San Diego v. Haas* (2012) 207 Cal.App.4th 472, 496.) Petitioner's argument that Subsection (d) is an impairment on contract because it essentially prohibits supplemental COLAs to retirees because supplemental COLAs have been issued since 1996 is flawed. Petitioner concedes that "retirees did not receive supplemental COLAs in 1996, 2003, 2008 and 2009." (Points & Auth., p. 4:4-5. See Req. Jud. Notice, Exhibit C.) Further, supplemental COLAs have historically been subject to conditions. (City Charter § A8.526-1(a) & (b).) Subsection (d) does not abrogate the spirit of these prior amendments. (*United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095, 1102-03.) Petitioner has not provided sufficient legal authority to support the proposition that the Court may question the accuracy of language contained in a voter-approved initiative and invalidate it on this basis. Further, " 'The voters are presumed to be aware of existing law [citation], including the administrative enforcement provisions. [Citations.]" (*Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1085.) Lastly, Petitioner has not presented sufficient evidence to show that the actuarial reports

presented to the Board of Supervisors by Cheiron do not comply with the requirements of the City Charter.

SO ORDERED.

Dated: 9-9-13

JUDGE OF THE SUPERIOR COURT

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Court City/ZIP: San Jose 95113
Plaintiff: San Jose Police Officers Association
Defendant: City of San Jose, et al
Representing: Defendant
Case No.: 1-12-CV-225926
Hearing Date:
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